



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

April 23, 1953

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Letter Opinion No. MS-26

Re: Legality of paying State
funds into the Officers'
Salary Fund of counties in
which there is a criminal
district attorney perform-
ing the duties of a dis-
trict attorney in accordance
with Article 3912e, Section
13 (b), V.C.S.

Dear Sir:

You have requested an opinion on the following
question:

"In view of your Opinion S-25, is it
proper for this Department to pay the ap-
portionment set out in Article 3912e, R.C.S.,
Section 13, Sub-section (b), in a county
where there is a criminal district attorney
performing the duties of the district attor-
ney?"

Attorney General's Opinion S-25 states "the
criminal district attorney is entitled to receive an an-
nual salary of \$500 from the State as provided in Section
21 of Article V of the Constitution of Texas. However,
no appropriation is available at this time for the pay-
ment of such salary." Section 13 (b) of Article 3912e,
Vernon's Civil Statutes, provides:

"The compensation of criminal district
attorney or county attorney performing the
duties of a district attorney, together with
the compensation of his assistants, shall be
paid out of the County Officers' Salary Fund;
but the state shall pay into such fund each
year an amount equal to a sum which bears
the same proportion to the total salary of

such criminal district attorney or county attorney performing the duties of a district attorney, together with the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year.

"In all counties having a county attorney or a criminal district attorney performing the duties of district attorney, and in which counties there were no felony fees collected from the state in 1935 by the office of county attorney or criminal district attorney in such county, the state shall pay into the County Officers' Salary Fund each year an amount equal to forty-eight and three-fourths ($48\frac{3}{4}\%$) percent of the total salary paid each year to such county attorney or criminal district attorney, together with the salary of his assistants."

Section 21 of Article V of the Constitution of Texas provides in part:

". . . district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. . ."

The constitutional salary of \$500 is required to be paid by the State rather than the County. The Criminal District Attorney receives compensation from both the State and the County. Att'y Gen. Ops. O-6676 (1945) and S-25 (1953). Section 13 (b) authorizes an apportionment by the State to the County Officers' Salary Fund, which bears no relation to the above constitutional salary and is, instead, a State allocation partially to compensate for the loss of fee income from the State to the County when the county officers were placed on a salary basis.

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You are therefore authorized to pay the apportionment set out in Section 13 (b) of Article 3912e. Att'y Gen. Op. O-6676.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
John Reeves
Assistant

JR:am:wb